after conviction was imposed. The partitions were not removed and the appellant was again charged under the present proceedings with allowing the partitions to remain after conviction "thereby committing a continuous offence". To this charge the appellant pleaded guilty and was sentenced to fine of $500. Against this sentence he appealed.

Held that the present proceedings were misconceived. The provision for a further penalty after conviction should, if imposed, form part of the Order on the original conviction.

By way of revision the present conviction and fine were set aside.

MAGISTRATE'S APPEAL.

K. E. Hilborne for the appellant.

A. V. Winslow (Crown Counsel) for the Crown.

Cur. Adv. Vult.

Sir Charles Murray-Aynsley, C.J. : — In this case the appellant had been convicted of an offence against section 166(1) of the Municipal Ordinance. As the offence consists of erecting, etc. it does not appear that in failing to remove the erection after conviction the appellant had committed a further offence for which he could be prosecuted subsequently. The provision for a further penalty after conviction should, if imposed, form part of the order on the original conviction.

Appeal allowed.

GUAN SENG KEE LTD.
v.
BUAN LEE SENG LTD.

[Court of Appeal (Sir Charles Murray-Aynsley, C.J. (Singapore), Mathew, C.J. (F.M.) and Brown, J.) July 15, 1952]

[Singapore — Civil Appeal No. 8 of 1952]

Landlord and tenant — Control of Rent Ordinance, 1947, s. 14 — "Tenant" — Meaning of.

On 2nd June, 1950, the plaintiffs in this case purchased from the concern known as United Engineers Ltd. the premises No. 7 Read Street, of which the tenants were at that time Messrs. Harper Gilfillan & Co., Ltd., who held a monthly tenancy.

On 8th July, 1950, the solicitors who were then acting for the plaintiffs served on Messrs. Harper Gilfillan & Co., Ltd., a Notice to Quit to take effect on 31st August, 1950, and on that latter date Messrs. Harper Gilfillan wrote to the plaintiffs' solicitors confirming that they were giving up their tenancy forthwith. Meantime Messrs. Harper Gilfillan had sublet the said premises to the present defendants as far back as 1st January 1947. For the purposes of this case there was no prohibition against sub-letting. The defendants have been and still are in possession of the premises as from the time of the sublease. The plaintiffs now bring this action to recover possession from the defendants. The defendants rely on the provisions of the Control of Rent Ordinance, 1947.

Held by the trial Judge that the defendants were tenants and as such entitled to the protection of section 14 of the Control of Rent Ordinance. **Held** further that when the interest of Messrs. Harper Gilfillan & Co., Ltd. ceased as from August 31, 1950, their lawful tenants, the present defendants began to hold as tenants immediately from the head landlords.

The plaintiffs appealed.

Held on appeal, affirming the decision of the learned trial Judge, that the protection of the Control of Rent Ordinance does extend to sub-tenants where the subletting was not unlawful.

Case referred to :—

(1) *Fernandez v. Murugiah* (1950) M.L.J. 83.

COURT OF APPEAL.

N. L. Macassey for the appellants.

J. L. P. Harris for the respondent.

Cur. Adv. Vult.

Rogers, J. [as trial Judge, after giving the facts as stated in the headnotes, continued] : — It is common ground between the parties that section 15 of the Ordinance does not apply, and the defendants look to the provisions of section 16(a), which constitute them as statutory tenants subject to their remaining in possession after the determination of their tenancy, and to their not being in a position to be deprived of such possession by reason of the provisions of the Ordinance.

It was laid down by the learned Chief Justice in the case of *Fernandez v. Murugiah*[1] that such protection is to be found in section 14, and for the landlord to be in a position to recover possession he must bring his case within one of the exceptions therein set out. It has been argued by Mr. Macassey however, that the defendants cannot rely on section 14 as the premises are not comprised in a tenancy. The tenants Harper Gilfillan & Co. he alleged had given up their contractural tenancy and were no longer in possession. The definition of the word "tenant" in section 2 of the Ordinance includes in the case of a sub-tenancy a sub-tenant to whom the premises or any part thereof is sub-let. I therefore come to the conclusion for the purposes of this case that the defendants were tenants and as such entitled to the protection of section 14. I further hold that when the interest of Messrs. Harper Gilfillan ceased as from 31st August, 1950, their lawful sub-tenants, the present defendants began to hold as tenants immediately from the head landlords. This being so, the plaintiffs are unable to bring themselves under exception 14(1)(i), as their new tenants are in possession, and I can find no other facts present which would justify me in holding that the defendants were disentitled to the protection of the section as from the 31st August, 1950.

Judgment for defendants with costs on the higher scale.

From the above judgment the plaintiffs appealed.

Sir Charles Murray-Aynsley, C.J. [delivering the judgment of the Court of Appeal, with which Mathew, C.J. (F.M.) and Brown, J. concurred, said] : — This case raises a point of some practical importance under the Control of Rent Ordinance, 1947 (No. 25 of 1947), namely, whether the protection of the Ordinance extends to sub-tenants where the subletting was not unlawful and no judgment has been obtained against the head tenant. The matter is not free from obscurity. It is clear that the Ordinance was intended to protect, among others, sub-tenants. Where a judgment is obtained against the head tenant the position is quite clear. It cannot be supposed that this protection was intended to be limited to such cases.

I agree with the conclusions reached by the learned Judge and with his reasons. I do not think there is any reason to say anything more. In my opinion this appeal should be dismissed with costs and the deposit paid out to the respondents.

Appeal dismissed.

PUBLIC PROSECUTOR v. BEH YEW SUAN.

[App. Crim. Juris. (Hill, J.) October, 25, 1952]

[Alor Star — Criminal Appeal No. 14 of 1952]

Criminal Procedure Code (Cap. 6), s. 173(h) — Amendment of charge — Duty of Magistrate — Prohibition of Exports (Amendment) Order 1950 — Finance Regulations.

This was an appeal by the Public Prosecutor against the acquittal of the respondent. In the course of the proceedings before the trial Court, the learned President was made aware that Item 2 in the 1st Schedule of the Prohibition of Exports Order, 1949, has been amended by the Prohibition of Exports (Amendments) Order 1950 and that this order was made under the Customs Proclamation. Nevertheless the learned President held that the law applicable was the Finance Regulations Proclamation.

Held that (1) once the attention of the trial Court has been directed, no matter how, to a relevant law or to an amendment, it then becomes the duty of the Court to consider whether its power to amend the charge under s. 173(h) of the Criminal Procedure Code should be exercised; (2) the learned President should have amended the charge in the present case.

Case referred to :—

(1) *Public Prosecutor v. Ishak & Ors.* (1952) M.L.J. 151.

CRIMINAL APPEAL from Sessions Court, Sungei Patani.

F. G. Cooke (Federal Counsel) for the appellant.

R. D. Hume for the respondent.

Cur. Adv. Vult.

Hill, J. : — As argument on the 11th was confined to the question whether the trial judge should have amended the charge in the exercise of his power under section 173 (h) of the Criminal Procedure Code I must deal first with this point.

It is obvious that if the present case is on all fours with that considered by Whitton, J., in *Public Prosecutor v. Ishak & Ors.*[1] the question is already answered.

I quote from the head note of the Kota Bahru Appeal[1]:—

"Held, that the prosecution cannot successfully maintain that a Magistrate had failed in his duty in this matter because he did not make an amendment to a charge which they did not themselves in any way suggest and based on a legal view of the facts quite different from that they themselves have put forward throughout the case."

In the present case it does not appear from the record, and it is not suggested, that the prosecution asked for an amendment, but, and here the difference between the cases arises, the learned President was made aware in the course of the proceedings before him that item 2 in 1st schedule of Prohibition of Exports Order 1949 (L.N. 12/49) has been amended by the Prohibition of Exports (Amendment) Order 1950 (L.N. 333) which defines 'gold' as "Gold : that is gold coin or gold bullion including gold in whatever state or form other than *bona fide* articles of personal jewellery" and that this order was made under section 2 of the Custom Proclamation No. 30/45. Nevertheless the learned President held that the law applicable was the Finance Regulations Proclamation.

In such circumstances I am of opinion that it would be going too far to apply the principles laid down by Whitton, J., on the point and I feel that the present case must be distinguished. I think that once the attention of the trial Court has been directed, no matter how, to a relevant law or, as in the present case, to an amendment, it then becomes the duty of the Court to consider in appropriate circumstances such as existed in the case under review whether its power under section 173 (h) of the Criminal Procedure Code should be exercised.

This was apparently not considered by the learned trial Judge and I am of opinion that he should not only have done so, but should have amended the charge as contended by the learned Deputy Public Prosecutor.

As I indicated in Court, I consider that there was a *prima facie* case for the respondent to answer to the charge, if amended. To avoid any risk of prejudicing the further proceedings I will confine myself to that brief statement in so far as the evidence is concerned.

The appeal is therefore allowed. The charge will be amended as indicated and the matter is referred back to the learned President to call on the respondent to make his statement.

Appeal allowed.